

CHAPTER 8 PESTICIDES

Part 1

General Provisions.

43-8-101. Short title.

This part and part 2 of this chapter shall be known and may be cited as the "Tennessee Insecticide, Fungicide, and Rodenticide Act."

[Acts 1951, ch. 150, § 1 (Williams, § 6808.7); T.C.A. (orig. ed.), § 43-701; Acts 1980, ch. 539, § 1.]

43-8-102. Definitions.

As used in this part and part 2 of this chapter, unless the context otherwise requires:

(1) "Active ingredient" means:

(A) In the case of a pesticide other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate;

(B) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of plant growth;

(C) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(D) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue; and

(E) In the case of a spray adjuvant, any ingredient which will act as a functioning agent;

(2) "Adjuvant" means any substance that, when added to a pesticide, is intended to aid, modify or enhance its effectiveness by its properties of serving as a wetting agent, detergent, spreading agent, synergist, deposit builder, adhesive, surfactant, emulsifying agent, deflocculating agent, water modifier, or similar agent, with or without toxic properties of its own, and when sold in a package or container separate from that of the pesticide with which it is to be used.

(3) "Adulterated" means a condition wherein strength or purity of a pesticide falls below the professed standard of quality as expressed on labeling under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent thereof has been wholly or in part abstracted;

(4) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment;

(5) "Commissioner" means the commissioner of agriculture;

(6) "Inert ingredient" means an ingredient which is not an active ingredient;

(7) "Ingredient statement" means a statement of the name and percentage of each active ingredient, together with the total percentage of all inert ingredients in the pesticide;

(8) "Label" means the written, printed or graphic matter on or attached to a pesticide, or the immediate container thereof and the outside container or wrapper of the retail package, if any there be, of the pesticide;

(9) "Labeling" means all labels and other written, printed or graphic matter:

(A) Upon the pesticide or any of its containers or wrappers;

(B) Accompanying the pesticide at any time;

(C) To which reference is made on the label or literature accompanying the pesticide, except when accurate, non-misleading reference is made to current official publications of the state experiment station, the state institute of agriculture, the Tennessee department of agriculture, the department of environment and conservation, or similar federal institutions or other official agencies of this state or other states when such agencies are authorized by law to conduct research in the field of pesticides;

(10) "Misbranded" means a condition as to a pesticide, wherein:

(A) Its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(B) It is an imitation of or is offered for sale under the name of another pesticide;

(C) Advertisement by any means is misleading in any particular;

(D) The labeling accompanying the pesticide does not contain directions for use which are necessary and when complied with would be adequate to protect health and the environment;

(E) The label does not bear an ingredient statement which is displayed on the outside of the immediate container and cannot be easily read as the container is presented or displayed under customary conditions of purchase;

(F) Any word, statement or other information required by or under authority of this part and part 2 of this chapter to appear on the label or labeling is not as prominently displayed as other material on the label or labeling;

(G) When used as directed or in accordance with commonly recognized practice, it is injurious to humans or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying the pesticide;

(H) The label does not contain a warning or caution statement which may be necessary and if complied with is adequate to protect health and the environment;

(I) The label does not bear the registration number assigned in connection with its registration;

(J) The labeling does not contain a statement of the use classification under which the product is registered; or

(K) In the case of a plant regulator, defoliant, or desiccant when used as directed, it is injurious to health and the environment; provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injurious when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with label claims and recommendations;

(11) "Person" means any individual, partnership, association, corporation or organized group of persons whether incorporated or not;

(12) "Pesticide" means any substance or mixture of substances or chemical intended for defoliating or desiccating plants or for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds or other forms of plant or animal life the commissioner shall declare to be a pest. This includes, but is not limited to, insecticides, fungicides, bactericides, herbicides, desiccants, defoliants, plant regulators, adjuvants or nematocides;

(13) "Registrant" means the person registering any pesticide pursuant to the provisions of this part and part 2 of this chapter; and

(14) "Use in a manner inconsistent with labeling" as to a pesticide means any use of a registered pesticide in a manner not permitted by its labeling, except that "use in a manner inconsistent with labeling" does not include:

(A) Applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling;

(B) Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless federal requirements demand that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling;

(C) Employing any method of application not prohibited by the labeling;

(D) Mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited on the labeling; or

(E) Any other use otherwise inconsistent but specifically permitted under federal law.

[Acts 1951, ch. 150, § 2 (Williams, § 6808.8); 1961, ch. 12, § 1; 1977, ch. 65, § 1; T.C.A. (orig. ed.), § 43-702; Acts 1980, ch. 539, § 2; 1992, ch. 693, § 1; 1996, ch. 805, §§ 1-3.]

43-8-103. Pesticides - Prohibitions as to sale or transportation.

(a) It is unlawful for any person to distribute, sell, or offer for sale within the state of Tennessee, or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(1) Any pesticide which is not registered pursuant to the provisions of § [43-8-104](#), or any pesticide where claims or directions for use differ in substance from the representations made in connection with its registration or if the composition of the pesticide differs from its composition as represented in connection with its registration;

(2) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to any outside container or wrapper of the retail package where required information on the immediate container cannot be clearly read, a label bearing:

(A) The name and address of the manufacturer, registrant or person for whom manufactured;

(B) The name, brand or trademarks under which the article is sold; and

(C) The net weight or measure of the contents subject, however, to such reasonable variations as the commissioner may permit;

(3) Any pesticide which contains any substance or substances in quantities highly toxic to humans, determined as provided in § [43-8-106](#), unless the label shall bear, in addition to any other matter required by this part and part 2 of this chapter:

(A) The skull and crossbones;

(B) The word "poison" prominently, in red on a background of distinctly contrasting color; and

(C) A statement of an antidote for the pesticide; or

(4) Any pesticide which is adulterated or misbranded.

(b) A violation of this section is a Class A misdemeanor.

[Acts 1951, ch. 150, § 3 (Williams, § 6808.9); 1975, ch. 239, § 1; T.C.A. (orig. ed.), § 43-703; Acts 1980, ch. 539, § 3; 1989, ch. 591, § 113; 2004, ch. 464, § 1.]

43-8-104. Registration of products - Annual renewal - Labeling - Statement filed by registrant - Registration of brand or grade - License to sell registered brands - Refusal or cancellation of registration.

(a) Every pesticide which is distributed, sold or offered for sale within this state or transported within this state shall be registered with the commissioner, except as provided below. The commissioner may register and permit the sale of any pesticide which has been duly registered under the provisions of the federal Insecticide, Fungicide and Rodenticide Act, but products so registered shall be subject to the registration fees provided for herein, and to all other provisions of this part and part 2 of this chapter. All pesticide products shall be registered annually and their registration shall expire on June 30, following the date of issuance.

(b) Products having the same formula and manufactured by the same person or firm, where the labeling contains the same claims, and the labels bear a designation identifying the products as the same pesticide, may be registered as a single pesticide, with additional names and labels added by a supplemental statement during the registration term. Within the discretion of the commissioner or the commissioner's authorized representative, a change in the labeling or formulas of a pesticide may be made within the registration term without requiring a reregistration of the product; provided, that the name of the item is not changed, and that no change is made which lowers the efficacy of the product.

(c) The registrant shall file with the commissioner a statement including:

(1) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(2) The name of the pesticide;

(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims made and to be made for it including directions for use; and

(4) In the case of adjuvants, surfactants, emulsifiers, wetting agents, and other materials included as adjuvants which have nonionic surfactants as the principal agent, the ingredient statement on the label must show the percentage of the active adjuvant at least by the generic chemical name and, further, that the specific chemical name identifying the hydrophobic and hydrophilic portions of the molecule and the ratio of the same must be given on a data sheet that shall accompany the label when application for registration is made, the latter being necessary in order that the chemical content may be determined by the department of agriculture, division of technical services, for regulatory purposes. In the case of products having cationic and anionic surfactants as the principal agent, the chemical names of such materials must be used in the ingredient statement on the label together with the percentage contents of the principal surfactants. In the case of products not involving hydrophobic and hydrophilic portions of the molecule such as in the case of most synergists and other nonsurfactant adjuvants, the chemical name of such material must be used in the ingredient statement on the label.

(d) If it does not appear to the commissioner that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this part and part 2 of this chapter, the commissioner shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with this part and part 2 of this chapter so as to afford the registrant an opportunity to make the necessary corrections.

(e) The commissioner may refuse to register or may revoke or suspend any or all registrations where the registrant is found to have violated any provision of this part and part 2 of this chapter, including rules promulgated under authority of this part and part 2 of this chapter. Any such proceedings shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in [title 4, chapter 5](#).

(f) Registration shall not be required of a pesticide which is merely shipped from one (1) plant or warehouse in this state to another for use as a constituent in a registered pesticide. Neither shall registration be required of a pesticide distributed under an experimental use permit issued by the federal environmental protection agency.

(g) Registration shall be maintained for one (1) year after the effective date upon which a registrant ceases to distribute a pesticide within this state, unless the registrant can offer reasonable proof that no quantities of the pesticide remain commercially available.

[Acts 1951, ch. 150, § 5 (Williams, § 6808.11); 1961, ch. 12, § 2; 1975, ch. 239, § 2; T.C.A. (orig. ed.), § 43-706; Acts 1980, ch. 539, § 6; 1985, ch. 195, § 1; 1994, ch. 960, § 7; 1996, ch. 805, § 4; T.C.A. § 43-8-106.]

43-8-105. Defacing or destroying label, refusing information, false guaranty, revelation of formula, noncooperation with officials prohibited.

It is unlawful:

(1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this part and part 2 of this chapter or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purposes of this part and part 2 of this chapter;

(2) For any manufacturer, distributor, dealer, carrier, or other person to refuse, upon written request specifying the nature or kind of pesticide to which such request relates, to furnish to or permit any person designated by the commissioner to have access to and to copy such records of business transactions as may be essential in carrying out the purposes of this part and part 2 of this chapter;

(3) For any person to give a guaranty or undertaking provided for in § [43-8-108](#) which is false in any particular, except that a person who receives and relies upon a guaranty authorized under § [43-8-108](#) may give a guaranty to the same effect, which guaranty shall contain, in addition to such person's own name and address, the name and address of the person residing in the United States from whom such person received the guaranty or undertaking;

(4) For any person to use for such person's own advantage or to reveal, other than to the commissioner, or officials or employees of the state of Tennessee, or officials or employees of the United States department of agriculture, or other federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the commissioner may prescribe, any information relative to formulas of products acquired by authority of § [43-8-104](#);

(5) For any person to oppose or interfere in any way with the commissioner or the commissioner's duly authorized agents in carrying out the duties imposed by this part and part 2 of this chapter;

(6) For any person to handle, transport, store, display or distribute pesticides in such a manner as to endanger health and the environment or to endanger food, feed, or other products that may be transported, stored, displayed or distributed with such pesticides; or

(7) For any person to dispose of, discard or store any pesticide or pesticide containers in such a manner as to cause injury to man, vegetation, crops, livestock, wildlife, beneficial insects or to pollute any water supply or waterways.

[Acts 1951, ch. 150, § 3 (Williams, § 6808.9); T.C.A. (orig. ed.), § 43-704; Acts 1980, ch. 539, § 4; T.C.A. § 43-8-104.]

43-8-106. Powers of commissioner.

(a) The commissioner is authorized, after opportunity for a hearing, to:

(1) Declare any form of plant or animal life or virus which is injurious to plants, humans, domestic animals, articles or substances to be a pest;

(2) Determine whether pesticides are highly toxic to humans; and

(3) Determine standards of coloring or discoloring for pesticides.

(b) The commissioner is further authorized to:

(1) Collect and undertake laboratory analysis of pesticides to determine their compliance with the requirements of this part and part 2 of this chapter; and the commissioner has the authority at all reasonable hours to enter into any car, warehouse, store, building, boat vessel or other place where pesticides are held for distribution or sale for the purpose of inspection or sampling, to procure samples for analysis or examination from any lot, package or parcel containing a pesticide;

(2) Publish from time to time information concerning the production, sale and use of any pesticide and make reports of the results of any analysis based on official samples of pesticides sold within the state;

(3) Classify pesticides for general use and/or restricted use, as well as those prohibited from use by regulation; provided, that such regulations shall be consistent with the requirements of the federal Insecticide, Fungicide and Rodenticide Act and regulations as administered by the environmental protection agency; and

(4) Review periodically the records of sales of restricted use pesticides by licensed dealers.

(c) The commissioner is authorized to promulgate such reasonable regulations relating to the sale and distribution of pesticides as the commissioner may find necessary to carry out the full intent and meaning of this part and part 2 of this chapter.

(d) The commissioner is authorized and empowered to cooperate with, and enter into agreements with, any other agency of this state, another state, or the federal government for the purpose of carrying out the provisions of this part and part 2 of this chapter.

[Acts 1951, ch. 150, § 6 (Williams, § 6808.12); 1975, ch. 239, § 3; T.C.A. (orig. ed.), § 43-707; Acts 1980, ch. 539, § 7; 1988, ch. 878, § 4; T.C.A. § 43-8-107.]

43-8-107. Notice given of violations - Hearing - Prosecution upon certification of facts.

(a) If it shall appear from the examination or evidence that any of the provisions of this part and part 2 of this chapter or the rules and regulations issued thereunder have been violated, the commissioner may cause notice of such violations to be given to the registrant, distributor, and possessor from whom the sample or evidence was taken. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the commissioner. If it appears after such hearing that there has been a sufficient number of violations of this part and part 2 of this chapter or the rules and regulations issued thereunder, the commissioner may certify the facts to the district attorney general or the county attorney or the city attorney for the county or municipality in which the violation shall have occurred, and furnish that officer with a copy of the results of the examination of such sample duly authenticated by the state chemist or other officer making the examination. It shall be the duty of every such attorney to whom the commissioner shall report any violation of this part and part 2 of this chapter to cause proceedings to be prosecuted without delay for the fines and penalties in such cases. Any person convicted of violating any provision of this part and part 2 of this chapter or the rules and regulations issued thereunder commits a Class A misdemeanor.

(b) Nothing in this section shall be construed as requiring the commissioner to report for the institution of proceedings under this part and part 2 of this chapter, minor violations of this part and part 2 of this chapter, whenever the commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

[Acts 1951, ch. 150, § 7 (Williams, § 6808.13); T.C.A. (orig. ed.), § 43-708; Acts 1989, ch. 591, § 113; T.C.A. § 43-8-108; 2004, ch. 464, § 2.]

43-8-108. Exemptions from penalties.

(a) The penalties provided for violations of § [43-8-103](#) do not apply to:

(1) Any carrier, while lawfully engaged in transporting a pesticide within this state, if such carrier shall, upon request, permit the commissioner or the commissioner's designated agent to copy all records showing the transactions in and movements of the articles;

(2) Public officials of this state and the federal government engaged in the performance of their official duties;

(3) The manufacturer or shipper of a pesticide for experimental use only:

(A) By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides; or

(B) By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "for experimental use only - not to be sold," together with the manufacturer's name and address; provided, that if a written permit has been obtained from the commissioner, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit; or

(4) Any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom such person purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to such person, and that it complies with the other requirements of this part and part 2 of this chapter, designating this part and part 2 of this chapter. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this part and part 2 of this chapter.

(b) This part and part 2 of this chapter shall not apply to any preparation, drug, or chemical intended to be used or sold solely for medicinal use or for toilet purposes.

[Acts 1951, ch. 150, § 8 (Williams, § 6808.14); T.C.A. (orig. ed.), § 43-709; Acts 1980, ch. 539, § 9; T.C.A., § 43-8-109.]

43-8-109. Injunction obtained to restrain violations.

In addition to other remedies herein provided, the commissioner may apply to any court having chancery jurisdiction in the county where a violation occurs, for a temporary or permanent injunction restraining any person from violating any provision of this part and

part 2 of this chapter or regulations promulgated pursuant thereto, irrespective of whether there exists an adequate remedy at law.

[Acts 1951, ch. 150, § 4 (Williams, § 6808.10); T.C.A. (orig. ed.), § 43-705; Acts 1980, ch. 539, § 8; T.C.A. § 43-8-105.]

43-8-110. "Stop sale, use, or removal" orders - Issuance and enforcement.

It is the duty of the commissioner to issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of pesticide and to hold at a designated place when the commissioner finds the pesticide is being offered or exposed for sale in violation of any of the provisions of this chapter, until the law has been complied with and the pesticide is released in writing by the commissioner or the violation has been otherwise legally disposed of by written authority; provided, that the owner or custodian of such pesticide shall have the right to appeal from such order to a court of competent jurisdiction in the county or city where the pesticides are found, praying for a judgment as to the justification of the order, and for the discharge of such pesticide from the order prohibiting the sale in accordance with the findings of the court; and provided further, that the provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this part and part 2 of this chapter. The commissioner shall release the pesticide so withdrawn when the requirements of the provisions of this part and part 2 of this chapter have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal.

[Acts 1951, ch. 150, § 9 (Williams, § 6808.15); T.C.A. (orig. ed.), § 43-710; Acts 1980, ch. 539, § 10.]

43-8-111. Seizure, condemnation and sale of pesticide for noncompliance with provisions of law.

(a) Any lot of pesticide not in compliance with the provisions of this part and part 2 of this chapter shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which the pesticide is located. In the event the court finds the pesticide to be in violation of this part and part 2 of this chapter and orders the condemnation of the pesticide, it shall be disposed of in any manner consistent with the quality of the pesticide and the laws of the state; provided, that in no instance shall the disposition of the pesticide be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of the pesticide or for permission to process or relabel the product to bring it into compliance with this part and part 2 of this chapter.

(b) When a decree of condemnation is entered against a pesticide, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide.

[Acts 1951, ch. 150, § 10 (Williams, § 6808.16); T.C.A. (orig. ed.), § 43-711; Acts 1980, ch. 539, § 10.]

43-8-112. Authority vested in commissioner delegable to department of agriculture employees.

All authority vested in the commissioner by virtue of the provisions of this part and part 2 of this chapter may with like force and effect be executed by such employees of the department of agriculture as the commissioner may from time to time designate for such purpose.

[Acts 1951, ch. 150, § 11 (Williams, § 6808.17); T.C.A. (orig. ed.), § 43-712.]

43-8-113. Funds collected - Disbursement.

All funds collected under the provisions of this part and part 2 of this chapter shall be paid into the state treasury, and the same are hereby appropriated exclusively to the department of agriculture, to be used solely and separately in carrying out the provisions of this part and part 2 of this chapter.

[Acts 1951, ch. 150, § 12 (Williams, § 6808.18); T.C.A. (orig. ed.), § 43-713.]

43-8-114. Local regulation of pesticides.

(a) Except as provided in § [43-8-115](#) or § [62-21-118\(b\)](#), no city, town, county or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation or statute regarding pesticide sale or use, including, but not limited to, registration, notification of use, advertising and marketing, distribution, applicator training and certification, storage, transportation, disposal, disclosure of confidential information or product composition.

(b) No provision of this section shall be construed to limit the authority of a city, town or county to zone for storage of such products or to provide or designate sites for disposal of such products, to regulate discharge to a sanitary sewer system or to implement an approved pesticide management plan as may be required by the Safe Drinking Water Act.

(c) The provisions of this section do not apply to any municipality having a population of not less than sixteen thousand five hundred (16,500) nor more than seventeen thousand five hundred (17,500) according to the 1990 federal census or any subsequent federal census.

[Acts 1992, ch. 667, §§ 2, 5.]

43-8-115. Agreements with certain municipal or county governments to implement the enforcement provisions of this chapter.

(a) Notwithstanding the provisions of this section, § [43-8-114](#), § [62-21-118\(b\)](#) or § [62-21-129](#) or any other law to the contrary, the commissioner shall enter into an agreement with any municipal and/or county government, within any county having a population in excess of two hundred fifty thousand (250,000) according to the 1990 federal census or any subsequent federal census, which requests authority to implement the enforcement provisions of this chapter, its equivalent or any part thereof, in its respective area of jurisdiction; provided, that each of the following conditions are met:

(1) The local government program standards are not less stringent than those of state law and regulations;

(2) The local government will adequately implement and enforce the program in the respective area of jurisdiction; and

(3) Upon execution of the agreement, the local government will be the sole entity responsible for implementation and enforcement of the local government program standards adopted.

(b) As used in subsection (a), "respective area of jurisdiction" means:

(1) In the case of a municipal government which enters into an agreement pursuant to subsection (a), the area lying within the corporate boundaries of the municipality; and

(2) In the case of a county government which enters into an agreement pursuant to subsection (a), the area lying within the boundaries of the county excluding that portion located within the corporate boundaries of a municipal government which has entered, or which subsequently enters, into an agreement pursuant to subsection (a).

(c) The commissioner shall retain the right to exercise oversight and evaluation of performance of local government and may terminate the agreement if, after an administrative hearing pursuant to the provisions of the Uniform Administrative Procedures Act, compiled in [title 4, chapter 5](#), it is found that the local program does not meet the state standards.

(d) Local governments which enter into an agreement pursuant to subsection (a) have the authority through their local legislative bodies to enact fees to provide for the administrative, regulatory and enforcement costs of the program.

[Acts 1992, ch. 667, § 4.]

Part 2

Pesticide Dealers.

43-8-201. Pesticide dealers - License required.

(a) No person shall sell or offer for sale within this state pesticides classified by the commissioner as being for restricted use, unless such person is the holder of a valid pesticide dealer license. A separate license shall be obtained for each location or outlet from which business is conducted.

(b) No person shall sell or offer for sale within this state any pesticide classified by the commissioner as being for restricted use unless the person to whom the sale is made holds a valid certificate or license issued by the department of agriculture, as required by § [62-21-115](#). The pesticide dealer shall require that each purchaser show evidence of such certificate or license prior to finalizing the sale.

[Acts 1975, ch. 239, § 2; T.C.A., § 43-706; Acts 1980, ch. 539, § 5; 2004, ch. 464, § 3.]

43-8-202. [Repealed.]

43-8-203. Qualifications for pesticide dealer license.

Each applicant for an original license must demonstrate, upon written, or written and oral, examination to be prescribed by the commissioner, the applicant's knowledge of pesticides, their usefulness and their hazards, the applicant's competence as a pesticide dealer and the applicant's knowledge of the laws and regulations governing the use and sale of pesticides.

[Acts 1975, ch. 239, § 2; T.C.A., § 43-706; Acts 1980, ch. 539, § 5.]

43-8-204. [Repealed.]

43-8-205. Pesticide dealer's employees - List of names furnished to commissioner - Dealer's responsibility for employees' actions.

(a) Every licensed pesticide dealer shall submit to the commissioner with each application for an original or renewal license, and at such other times as the commissioner may prescribe, the names of all persons employed by the pesticide dealer who sell or solicit the sale of restricted use pesticides.

(b) Each pesticide dealer shall be responsible for the action of every person who acts as the dealer's employee or agent in the solicitation or sale of pesticides, and in all claims and recommendations for use or application of pesticides; however, it is not the intent of this section to license a pesticide applicator who sells pesticides as an integral part of such applicator's services when such applicator has complied with existing applicators' laws.

[Acts 1975, ch. 239, § 2; T.C.A., § 43-706; Acts 1980, ch. 539, § 5.]

43-8-206. Records of restricted use pesticides.

(a) Every licensed pesticide dealer shall maintain records necessary to identify all purchasers of restricted use pesticides.

(b) Each pesticide dealer's records shall include the name of the purchaser, the purchaser's certification number, and the name and the amount of the pesticide purchased.

[Acts 1988, ch. 878, § 3.]

Part 3

Aerial Application of Pesticides.

43-8-301. Definitions.

As used in this part, unless the context otherwise requires:

(1) "Adjuvant" means any substance that, when added to a pesticide, is intended to aid, modify or enhance its effectiveness by its properties of serving as a wetting agent, detergent, spreading agent, synergist, deposit builder, adhesive, surfactant, emulsifying agent, deflocculating agent, water modifier, or similar agent, with or without toxic properties of its own, and when sold in a package or container separate from that of the pesticide with which it is to be used.

(2) "Aircraft" means any contrivance known or hereafter invented that is used or designed for navigation of or flight in the air over land or water and is designed or adaptable for use in applying pesticides in any form;

(3) "Commercial aerial applicator" means any person who engages in the application of pesticides by aircraft;

(4) "Commissioner" means the commissioner of agriculture, or the commissioner's authorized agent;

(5) "Custom application of pesticides" means any application of pesticides for hire;

(6) "Department" means the department of agriculture;

(7) "Licensee" means any person duly licensed under this part;

(8) "Person" means any individual, partnership, firm, corporation, company, trust, association, or other legal entity;

(9) "Pesticide" means any substance or mixture of substances, or chemical intended for defoliating or desiccating plants, or for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other form of plant or animal life the commissioner shall declare to be a pest. This includes, but is not limited to, insecticide, fungicide, bactericide, herbicide, desiccant, defoliant, adjuvant or nematocide;

(10) "Pilot" means any person flying an aircraft;

(11) "Restricted use pesticide" means a pesticide that the commissioner has so designated by regulation under the Tennessee Insecticide, Fungicide and Rodenticide Act, compiled as parts 1 and 2 of this chapter; and

[Acts 1973, ch. 90, § 1; 1974, ch. 431, § 1; 1975, ch. 209, § 1; T.C.A., §§ 43-2901, 43-9-101; Acts 1996, ch. 805, §§ 5, 6.]

43-8-302. Powers and duties of commissioner.

The commissioner has and shall exercise the following powers and duties:

(1) Promulgate rules and regulations which the commissioner determines are necessary to implement and supplement this part and provide for its orderly administration;

(2) Prescribe qualifications for applicants for licenses to engage in the custom application of pesticides and render such tests as are necessary to determine whether the applicant meets the qualifications;

(3) Obtain the advice of members of the commercial aerial applicators industry before issuing rules, regulations, or qualifications for applicants for licenses;

(4) Issue licenses to qualified applicants and collect the appropriate fees;

(5) Hold hearings to determine whether or not any violation of this part or rules and regulations issued pursuant thereto has taken place, and transmit any information or material to the local district attorney general for prosecution if the commissioner determines that a violation has occurred;

(6) Suspend or revoke any permit following a hearing as provided for in § [43-8-305](#);

(7) Declare states of emergency and issue temporary permits as provided for in § [43-8-309](#);

(8) Require that licensees maintain records and submit reports as necessary to show the nature and extent of their operation and any other information necessary to carry out the provisions and intent of this part;

(9) Impose such limitations on the licenses granted to pilots, particularly with respect to compliance with the Tennessee Insecticide, Fungicide and Rodenticide Act, compiled as parts 1 and 2 of this chapter, as the commissioner may find necessary after determination of the applicant's qualifications;

(10) Promulgate rules and regulations as required by the environmental protection agency; and

(11) Inspect periodically the operation and conduct of licensees.

[Acts 1973, ch. 90, § 2; 1975, ch. 209, § 2; 1977, ch. 210, § 1; T.C.A., §§ 43-2902, 43-9-102; Acts 1988, ch. 878, § 5.]

43-8-303. [Repealed.]

43-8-304. Licensing requirements - Insurance.

(a) Each licensee-pilot must hold a valid federal aviation administration agronaut license and prove such licensee's proficiency to the commissioner. These requirements can be supplemented by rule or regulation issued by the commissioner.

(b) An acceptable liability insurance policy in the amount of one hundred thousand dollars (\$100,000) shall be in effect, and proof of such insurance shall accompany each application for license for an aircraft.

(c) The aircraft licenses shall be prominently displayed on each aircraft and each pilot must carry the license any time such pilot is working as a pilot engaged in custom application of pesticides.

(d) Any person applying for a license as a commercial aerial applicator shall have first obtained a certification in the category of pesticides that they intend to apply, as provided in the Tennessee Application of Pesticides Act of 1978, compiled in [title 62, chapter 21](#), or provide sufficient evidence of an equivalent certification from a state with which the state of Tennessee has a current and official reciprocal agreement.

(e) Any person applying for a license as a commercial aerial applicator shall take an examination administered by the department of agriculture as directed by the commissioner in order to determine if the applicant has the knowledge and technical qualifications necessary for the issuance of such license.

(f) Aerial applicators holding a current license under Tennessee law may renew such license without examination, but such renewed license shall be subject to whatever restrictions or limitations as are indicated by the license pursuant to the provisions of § [43-8-302\(9\)](#).

[Acts 1973, ch. 90, § 4; 1974, ch. 431, § 1; T.C.A., §§ 43-2904, 43-9-104; Acts 2003, ch. 120, § 1.]

43-8-305. License revocation or suspension - Hearing - Review.

(a) In the event the commissioner has reason to believe a licensee is guilty of violating any of the provisions of this part, including the rules and regulations promulgated hereunder, the commissioner shall conduct a hearing to determine if the license shall be suspended or revoked. A ten-day notice shall be given and the hearing conducted at Ellington Agricultural Center, Nashville.

(b) The commissioner has the power to subpoena any persons or records incident to the hearing, and a charge of contumacy may be filed for those who refuse to comply. The

commissioner may administer oaths to those giving evidence. A court reporter shall be in attendance.

(c) Following the hearing, the commissioner may:

- (1) Permanently revoke the license;
- (2) Temporarily revoke the license; or
- (3) Suspend the license for a definite period of time.

(d) The action of the commissioner may be reviewed by common law writ of certiorari to the chancery court of Davidson County and the petition shall be filed within ten (10) days from the date of the commissioner's order. Upon the grant of the writ of certiorari, the commissioner shall certify to the court a complete transcript of the proceedings instituted before the commissioner. This certified transcript shall constitute the whole record, and no additional proof or evidence shall be considered by the chancery court of Davidson County. The decision of the commissioner shall remain final until modified by the commissioner or by the courts.

[Acts 1973, ch. 90, § 5; T.C.A., §§ 43-2905, 43-9-105.]

43-8-306. Violations - Penalties.

Operating as a commercial aerial applicator without a license, using or applying a pesticide in a manner that is not consistent with the label or label restrictions, or otherwise violating this part, including any rules or regulations, is a Class A misdemeanor.

[Acts 1973, ch. 90, § 6; 1977, ch. 210, § 3; T.C.A., §§ 43-2906, 43-9-106; Acts 1989, ch. 591, § 113; 2003, ch. 120, § 3.]

43-8-307. Enjoining violations.

The commissioner, on determining that any person, firm, partnership, or corporation may have violated any provision of this part, may petition for injunctive relief from further violation. Such petition shall be addressed to the chancery court in the county in which the offense occurred or in which the offender's principal place of business is located, or where the offender is doing business or resides. The chancellor, on determining that probable cause of a violation of this part exists, shall issue appropriate injunctive relief.

[Acts 1973, ch. 90, § 7; T.C.A., §§ 43-2907, 43-9-107.]

43-8-308. Exemption from law.

(a) This part does not apply to local, state, or federal government aerial operations nor where legitimate agricultural experiments are being conducted as recognized by the

commissioner, nor shall this part apply where a landowner wishes to make an application of pesticides with the landowner's personally owned aircraft on the landowner's personally owned land.

(b) The exemptions enumerated in this section do not apply to any user of pesticides that have been designated for restricted use.

[Acts 1973, ch. 90, § 8; 1975, ch. 209, § 3; T.C.A., §§ 43-2908, 43-9-108.]

43-8-309. State of emergency - Temporary permits - Fee - Bond of nonresidents.

(a) The commissioner is hereby authorized to declare a state of emergency if there is an epidemic or plague of such proportions to endanger public health and safety, or to threaten loss or severe damage to a crop. Under such conditions, the commissioner is authorized or empowered to permit additional commercial aerial applicators to operate within the state and shall issue temporary permits for the same. A fee of one hundred dollars (\$100) must accompany each application for such permit.

(b) All nonresident licensees or nonresident persons issued temporary permits shall file with the department an acceptable liability insurance policy in the amount of one hundred thousand dollars (\$100,000) guaranteeing an answer for damages resulting from custom application of pesticides. In addition, every nonresident licensee is required to appoint a resident service agent.

[Acts 1973, ch. 90, § 9; 1974, ch. 431, § 1; 1975, ch. 209, § 4; 1977, ch. 210, § 4; T.C.A., §§ 43-2909, 43-9-109.]

43-8-310. Denial of licensing - Contesting denial.

The commissioner of agriculture may deny licensing to applicants not meeting the requirements for certification and/or licensing or for violations of the rules or statutes concerning the use, purchase or sale of pesticides; provided, however, that any person denied such certification or licensure may contest such decision by requesting a hearing under the Tennessee Administrative Procedures Act, compiled in [title 4, chapter 5](#).

[Acts 2003, ch. 120, § 2.]

43-8-311. Photographic identification.

Aerial applicators shall have in their possession a valid aerial applicators license, containing photographic identification, issued by the Tennessee department of agriculture, at all times when they are engaged in the aerial application of pesticides in the state of Tennessee.

[Acts 2003, ch. 120, § 2.]

43-8-312. Notification of application.

Aerial applicators applying pesticides in the state of Tennessee shall notify the sheriff's office in the county in which an application is to be made. Such notification shall be made prior to the pesticide application and no later than the day of the application. The aerial applicator shall report the name of the landowner and the location of each intended pesticide application as well as the name or names of the pesticide or pesticides to be sprayed.

[Acts 2003, ch. 120, § 2.]

43-8-313. Securing aircraft.

All aircraft licensed under this chapter shall be secured or otherwise rendered inoperable by means of a prop chain lock, gust lock, throttle restriction, or other measures acceptable to the commissioner of agriculture except when the aircraft is in use or under the direct control of an aerial applicator licensed under this chapter or under the direct responsibility of an airport operator.

[Acts 2003, ch. 120, § 2.]

43-8-314. Log Records - Product Label Directions.

(a) Aerial applicators shall maintain a log record for a period of thirty-six (36) months on each application. Such record shall be made available on demand to the commissioner for review and copies shall be provided to representatives of the department of agriculture upon request. Aerial applicators located outside the boundaries of the state of Tennessee, shall submit a certified copy of any log record for any or all applications as required by the commissioner within forty-eight (48) hours at a time and location designated by the commissioner.

(b) The log record shall clearly set out the following information relative to each pesticide application:

- (1) The pesticide used and its EPA registration number;
- (2) The crop or plant to which the pesticide was applied;
- (3) The dosage rate of the application;
- (4) The approximate acreage to which the pesticide was applied;
- (5) The location, description, and GPS coordinates of the area to which the pesticide is applied;
- (6) The landowner, producer, or other person employing such aerial applicator's services;
- (7) The date of pesticide application;
- (8) The name and Tennessee license number of the aerial applicator; and

(9) The decal number of the aircraft used for the application.

(c) Aerial applicators shall apply all pesticides in a manner that is consistent with the label directions for that product. Aerial applicators must submit evidence to prove that label directions were followed and all restrictions were fully met when requested to do so by the commissioner.

[Acts 2003, ch. 120, § 2.]